



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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PARTIAL REVISION OF APPENDIX D (CUV UR)

**Uniform Rules concerning Contracts of Use of Vehicles
in International Rail Traffic
(CUV - Appendix D to the Convention)**

INTRODUCTION

In accordance with Article 17 § 1 b) of COTIF, the 25th session of the Revision Committee (Berne, 25 – 26.6.2014) examined and adopted the amendment to Article 9 of the CUV UR to be submitted to the General Assembly for decision.

The General Assembly has the competence for the amendment to Article 33 § 2 of COTIF. The aim of this document is to explain the proposals to amend the CUV Uniform Rules submitted to the General Assembly for adoption following preliminary approval by the Revision Committee.

It also sets out the modifications to the consolidated Explanatory Report that should be made (doc. AG 12/13) concerning these provisions. Documents AG 12/10 Add.1 and Add.2 set out the precise wording of the provisions put to the vote.

GENERAL REMARKS

1. In July 2013, the Secretariat of OTIF started considering the need to deal at legislative level, in the CUV UR, with the rights and obligations of the parties to the contract of use of wagons as regards wagon maintenance. The Secretariat's main aim was to clarify the liability regime to be applied between railway undertakings and keepers on this sensitive issue.

To this end, the Secretariat set up a working group on the revision of the CUV UR made up of experts from the States, national safety authorities and stakeholders, which met three times in Berne (17 October 2013, 28 January 2014 and 9 April 2014). This working group also worked closely with the WG TECH working group, which met in Bonn on 5 February 2014.

Bearing in mind the discussions in the working group on the revision of the CUV UR, WG TECH and the Revision Committee, the Secretariat is submitting this amendment to the CUV Uniform Rules, which aims to integrate the amendments to the obligations of rail transport undertakings (RU) and keepers brought about by the creation of the role of the Entity in Charge of Maintenance (ECM) in OTIF law by Article 15 of the Uniform Rules concerning the Technical Admission of Railway Material (ATMF UR).

The CUV UR are one of the main legal bases of the General Contract of Use of Wagons (GCU). In effect, the CUV UR can be qualified as a mainly suppletory model contract, i.e. their provisions apply to contracts between the parties except if they decide otherwise. In fact, a few provisions are mandatory, but they are rare.

The purpose of the amendments to the CUV UR concerning ECMs is therefore to help support the sector in implementing more detailed provisions, as the amendments proposed only provide a general framework.

Therefore, these amendments take the form of an amendment to Article 9, which will apply to all vehicles as well as to keepers and the rail transport undertakings of the States Parties.

2. Annex A to the ATMF UR on the certification of entities in charge of maintenance¹, transposes the ECM Regulation² into OTIF law.

For the carriage of goods, wagons support significant international traffic in which a keeper (who, in particular, may be a rail transport undertaking or its subsidiary) entrusts a rail transport operation with the operation of his wagons. Therefore, the keeper's specific responsibilities must be particularly clear in OTIF law, as it is the keeper who must provide the direct link to the ECM, whether he decides to be an ECM himself or whether he chooses to sub-contract.

The discussions at the meeting of the working group on the revision of the CUV UR held on 28 January 2014 resulted in a request to the Committee of Technical Experts' WG TECH for its opinion on the possible inclusion in the ATMF UR of all the provisions proposed by the Secretariat.

WG TECH met on 5 February 2014 in Bonn and concluded that the provision concerning the keeper's general responsibility for designating an ECM was based on Article 15 § 1 of the ATMF UR and that the other provisions proposed were based on Article 9 of the CUV UR. In contrast, it was considered that the provision defining the ECM's function with respect to the keeper and the question of the exchange of information (see 3) came within the framework of CUV.

At its 25th session (Berne, 25 and 26 June 2015), the Revision Committee amended Article 15 § 1 of the ATMF on the basis of a proposal from the Committee of Technical Experts, as follows:

"Railway vehicles must be in a good state of maintenance in such a way that they comply with the provisions as defined in Article 7. The condition of vehicles must not in any way compromise operational safety and must not harm the infrastructure, environment and public health by their circulation or their use in international traffic. To that end, railway vehicles shall be made available for and undergo the service, inspections and maintenance as prescribed in the Maintenance File. **It shall be the responsibility of the keeper to designate an ECM for this purpose.**"

JUSTIFICATION FOR THE AMENDMENT TO ARTICLE 9 AND PROPOSALS FOR CORRESPONDING AMENDMENTS TO THE CONSOLIDATED EXPLANATORY REPORT.

1. The new paragraph 3 proposed for Article 9 concerning liability for servants and other persons stipulates that:

"§ 3 The entity in charge of maintenance (ECM) as defined in Article 15 § 2 of the ATMF Uniform Rules shall be considered as a person whose services the keeper makes use of.

The contract defined in Article 1 shall contain the relevant provisions to ensure the exchange of information as defined in Article 15 § 3 of the ATMF Uniform rules between the ECM and the railway undertaking."

¹ Annex A (A 94-30/1.2012) to the ATMF UR dated 1 May 2012 on the certification and audit of ECM

² Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007

This makes it possible to ensure that:

- a) In § 1, the keeper assumes his obligations in respect of the maintenance of the wagon under the contract of use in international traffic by having recourse to an ECM, which is his servant in line with the model of § 2 of Article 9, which deals with the infrastructure manager. It enables identification of both the person responsible and the legal instrument which underpins this responsibility. The working group on the revision of the CUV UR decided not to define the concept of "ECM" in Article 2. In contrast, the majority of delegations present were in favour of referring to Article 15 § 2 of the ATMF UR, as this provision describes precisely the role and functions of the ECM.
- b) In § 2, the contract of use organises the exchanges of information required by Article 15 § 3 of the ATMF UR and by Article 5 of Annex A to the ATMF UR. It is essential that the CUV UR can enable clear identification of the role and mutual obligations of the actors, either within the framework of bilateral contracts, or in the framework of multilateral contracts, such as the GCU for wagons.

While the wording of the new paragraph 3 proposed in Article 9 of the CUV UR does reflect the discussions at the working group on the revision of the CUV UR, it should nevertheless be noted that there was no consensus on this provision, and that Germany entered a reservation on this new provision. Germany repeated this reservation at the 25th session of the Revision Committee

2. It is proposed to amend the consolidated Explanatory Report as follows:

- a) With regard to the part of the consolidated Explanatory Report on the "Partial revision of the CUV UR".

“32. To this end, the Secretariat set up a working group on the revision of the CUV UR made up of experts from the States, national safety authorities and stakeholders, which met three times in Berne (17 October 2013, 28 January 2014 and 9 April 2014).

In particular, the Secretariat proposed to this working group that it should amend the definition of keeper (Art. 2 c)) to align it as much as possible with the definition in Directive 2008/110/EC, which has been taken over in the ATMF UR. "It also proposed an amendment to Article 9 of the CUV UR."

- b) With regard to the part of the consolidated Explanatory Report on Article 9 of the CUV UR

"4. In July 2013, the Secretariat of OTIF started considering the need to deal at legislative level, in the CUV UR, with the rights and obligations of the parties to the contract of use of wagons as regards wagon maintenance.

In fact, implementation of the role of ECM in OTIF law is based on Annex A to the ATMF UR on the certification of entities in charge of maintenance³, which transposes the ECM Regulation⁴ into OTIF law.

The purpose of the amendments to the CUV UR concerning ECMs is therefore to help support the sector in implementing more detailed provisions, as the amendments proposed only provide a general framework.

³ Annex A (A 94-30/1.2012) to the ATMF UR dated 1 May 2012 on the certification and audit of ECM

⁴ Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007

The new paragraph 3 of Article 9 therefore aims to ensure

- a) In § 1, the keeper assumes his obligations in respect of the maintenance of the wagon under the contract of use in international traffic by having recourse to an ECM, which is his servant in line with the model of § 2 of Article 9, which deals with the infrastructure manager. It enables identification of both the person responsible and the legal instrument which underpins this responsibility. The working group on the revision of the CUV UR decided not to define the concept of "ECM" in Article 2. In contrast, the majority of delegations present were in favour of referring to Article 15 § 2 of the ATMF UR, as this provision describes precisely the role and functions of the ECM. The amendment to the first paragraph of Article 9 § 3 of the CUV UR does not affect the existing allocation of responsibilities between the ECM and the vehicle keeper.
- b) In § 2, the contract of use organises the exchanges of information required by Article 15 § 3 of the ATMF UR and by Article 5 of Annex A to the ATMF UR. It is essential that the CUV UR can enable clear identification of the role and mutual obligations of the actors, either within the framework of bilateral contracts, or in the framework of multilateral contracts, such as the GCU for wagons.

Proposal for decision

1. The General Assembly adopts the amendment to Article 9 of the CUV UR as set out in document AG 12/10 Add.1.
2. The General Assembly approves the amendments to the consolidated Explanatory Report proposed in this document and set out in document AG 12/10 Add.2.
3. The General Assembly mandates the Secretary General to make the corresponding amendments to the consolidated Explanatory Report on the CUV UR and, if necessary, to summarise the decisions it has taken on the amendments to the CUV UR in the Explanatory Report.

Annexes